



**STATE OF TENNESSEE  
DEPARTMENT OF ENVIRONMENT AND CONSERVATION  
DIVISION OF WATER POLLUTION CONTROL  
401 Church Street  
L&C Annex 6th Floor  
Nashville, TN 37243-1534**

April 24, 2008

R & R Excavating Company, LLC  
Stephen A. Irving – Registered Agent  
344 West Outer Drive  
Oak Ridge, Tennessee 37830

**CERTIFIED MAIL  
RETURN RECEIPT REQUESTED  
RECEIPT #7006 0810 0000 1061 7597**

Subject: DIRECTOR'S ORDER NO. WPC08-0075  
THE DOCKS AT CANEY CREEK  
LAND RESOURCES WATTS BAR, LLC  
ROANE COUNTY, TENNESSEE

Dear Mr. Irving:

Enclosed is a Director's Order and Assessment of Civil Penalty issued by Paul E. Davis, Director of the Division of Water Pollution Control, under the delegation of Commissioner James H. Fyke. Read the Order carefully and pay special attention to the NOTICE OF RIGHTS section.

Corporations, limited partnerships, limited liability companies, and other artificial entities created by law must be represented in any legal proceeding resulting from an appeal of this Order and Assessment by an attorney licensed to practice law in the State of Tennessee. Non-attorneys may participate in any such proceedings to the extent allowed by law.

If you or your attorney has questions concerning this correspondence, contact Mark Jordan at (615) 532-0675.

Sincerely,

Patrick N. Parker, Manager  
Enforcement and Compliance Section

PNP:MAJ

cc: DWPC – EFO-Nashville  
DWPC – Compliance File  
OGC



**STATE OF TENNESSEE  
DEPARTMENT OF ENVIRONMENT AND CONSERVATION  
DIVISION OF WATER POLLUTION CONTROL  
401 Church Street  
L&C Annex 6th Floor  
Nashville, TN 37243-1534**

April 24, 2008

National Registered Agents, Inc.  
1900 Church Street – Suite 400  
Nashville, Tennessee 37203

**CERTIFIED MAIL  
RETURN RECEIPT REQUESTED  
RECEIPT #7006 0810 0000 1061 7580**

Subject: DIRECTOR'S ORDER NO. WPC08-0075  
THE DOCKS AT CANEY CREEK  
LAND RESOURCES WATTS BAR, LLC  
ROANE COUNTY, TENNESSEE

To Whom It May Concern:

Enclosed is a Director's Order and Assessment of Civil Penalty issued by Paul E. Davis, Director of the Division of Water Pollution Control, under the delegation of Commissioner James H. Fyke. Read the Order carefully and pay special attention to the NOTICE OF RIGHTS section.

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If you or your attorney has questions concerning this correspondence, contact Mark Jordan at (615) 532-0675.

Sincerely,

Patrick N. Parker, Manager  
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OGC

**STATE OF TENNESSEE  
DEPARTMENT OF ENVIRONMENT AND CONSERVATION**

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<b>IN THE MATTER OF:</b>	)	
	)	
	)	
<b>LAND RESOURCES WATTS BAR, LLC</b>	)	
<b>and</b>	)	<b>DIVISION OF WATER</b>
<b>R &amp; R EXCAVATING COMPANY, LLC</b>	)	<b>POLLUTION CONTROL</b>
	)	
<b>RESPONDENTS</b>	)	
	)	<b>CASE NUMBER WPC08-0075</b>

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**DIRECTOR’S ORDER AND ASSESSMENT**

NOW COMES Paul E. Davis, director of the Tennessee Division of Water Pollution Control, and states:

**PARTIES**

**I.**

Paul E. Davis is the duly appointed director of the Division of Water Pollution Control by the commissioner of the Tennessee Department of Environment and Conservation (hereinafter the “division” and the “department” respectively).

**II.**

Land Resources Watts Bar, LLC (hereinafter “Respondent Land Resources”) is a foreign corporation licensed to conduct business in the state of Tennessee and is the owner and developer of the Docks at Caney Creek, a residential subdivision located adjacent to New Hope Road in Roane County (hereinafter the “site”). Service of process may be made on Respondent Land Resources through National Registered Agents, Inc., at 1900 Church Street, Suite 400, Nashville, Tennessee 37203.

### III.

R & R Excavating Company, LLC (hereinafter “Respondent R & R”) is an active corporation licensed to conduct business in the state of Tennessee and is contracted by Respondent Land Resources to conduct construction activities at the site. Service of process may be made on Respondent R & R through Stephen A. Irving, Registered Agent, at 344 West Outer Drive, Oak Ridge, Tennessee 37830.

### JURISDICTION

### IV.

Whenever the commissioner has reason to believe that a violation of Tennessee Code Annotated (T.C.A.) § 69-3-101 *et seq.*, the Water Quality Control Act (the “Act”), has occurred, or is about to occur, the commissioner may issue a complaint to the violator and the commissioner may order corrective action be taken pursuant to T.C.A. § 69-3-109(a) of the Act. Further, the commissioner has authority to assess civil penalties against any violator of the Act, pursuant to T.C.A. § 69-3-115 of the Act; and has authority to assess damages incurred by the state resulting from the violation, pursuant to T.C.A. § 69-3-116 of the Act. Department Rules governing general water quality criteria and use classifications for surface waters have been promulgated pursuant to T.C.A. § 69-3-105 and are effective as the *Official Compilation Rules and Regulations of the State of Tennessee*, Chapters 1200-4-3 and 1200-4-4 (the “Rule”). Pursuant to T.C.A. § 69-3-107(13), the commissioner may delegate to the director any of the powers, duties, and responsibilities of the commissioner under the Act.

### V.

The Respondents are “persons” as defined by T.C.A. § 69-3-103(20) and as herein described, have violated the Act.

## VI.

Tennessee Code Annotated § 69-3-108 requires a person to obtain coverage under a permit from the department prior to discharging any substances to waters of the state, or to a location from which it is likely that the discharged substance will move into waters of the state. Coverage under the general permit for Storm Water Discharges Associated with Construction Activity (hereinafter the “TNCGP”) may be obtained by submittal of a Notice of Intent (NOI), a site specific Storm Water Pollution Prevention Plan (SWPPP), and appropriate fee.

## VII.

Pursuant to T.C.A. § 69-3-108, Rule 1200-4-7-.04 requires a person to submit an application prior to engaging in any activity that requires an Aquatic Resource Alteration Permit (hereinafter the “ARAP”) that is not governed by a general permit or a § 401 Water Quality Certification. No activity may be authorized unless any lost resource value associated with the proposed impact is offset by mitigation sufficient to result in no overall net loss of resource value.

## VIII.

The unnamed tributaries to Watts Bar Reservoir and Watts Bar Reservoir, described herein, are “waters of the state” as defined by T.C.A. § 69-3-103(33). Pursuant to T.C.A. § 69-3-105(a)(1), all waters of the state have been classified by the Tennessee Water Quality Control Board for suitable uses. Department Rule 1200-4-4, *Use Classifications for Surface Waters*, is contained in the *Rules of Tennessee Department of Environment and Conservation Division of Water Pollution Control Amendments*. Accordingly, these waters of the state are classified for the following uses: fish and aquatic life, recreation, irrigation, and livestock watering and wildlife.

## **FACTS**

### **IX.**

On March 22, 2004, Respondent Land Resources submitted a NOI, SWPPP, and appropriate fee requesting coverage under the TNCGP for construction activities at the site. A primary contractor was not identified on the NOI.

### **X.**

On April 12, 2004, Respondent Land Resources submitted an ARAP application requesting written authorization under the General Permit for Road Crossings for the construction of minor road crossings over two unnamed tributaries to Watts Bar Reservoir.

### **XI.**

On April 14, 2004, the division issued coverage under the TNCGP for construction activities at the site and assigned tracking number TNR130783 and also issued written ARAP authorization under the General Permit for Road Crossings and assigned tracking number KFO2004-038.

### **XII.**

On June 18, 2004, Respondent Land Resources submitted an amended NOI indicating Respondent R & R as primary contractor for the site.

### **XIII.**

On July 14, 2004, division personnel from the Knoxville Environmental Field Office (KEFO) conducted an inspection at the site and noted that the two minor road crossings had been

improperly constructed, and eroded material was migrating into the unnamed tributaries from the crossing locations. Additionally, Erosion Prevention and Sediment Control (EPSC) measures throughout the site had been improperly installed, allowing eroded material to migrate into the unnamed tributaries.

#### **XIV.**

On October 1, 2004, division personnel conducted a site inspection in order to determine compliance with the TNCGP, and at the request of a representative of Respondent Land Resources, to conduct hydrologic determinations of several watercourses at the site. Division personnel determined that two additional streams, which had not been identified on the NOI and SWPPP, flowed through the site. Division personnel obtained Global Positioning System (GPS) locations of the origins of these two streams and flagged the origin points for future reference. Additionally, division personnel noted that EPSC measures were inadequate, had not been maintained, and were allowing eroded material to migrate into the unnamed tributaries to Watts Bar Reservoir. Large areas of the site were unstable and the road crossings had not been maintained in accordance with the terms and conditions of the ARAP issued for these crossings. Division personnel forwarded the findings of the hydrologic determination to Respondent Land Resources representatives in correspondence dated October 4, 2004.

#### **XV.**

On October 4, 2004, the division issued a Notice of Violation (NOV) to Respondent Land Resources for the violations noted during the October 1, 2004, site inspection. Respondent Land Resources was instructed to immediately correct the deficiencies to the EPSC measures noted during the site inspection and to schedule a Compliance Review Meeting (CRM) as soon as possible.

## **XVI.**

On January 11, 2005, division personnel conducted a site inspection during a rain event and noted that inadequate EPSC measures were allowing sediment-laden water to be discharged into a cove of Watts Bar Reservoir.

## **XVII.**

On August 11, 2005, division personnel conducted a site inspection and noted that large areas of the site were bare and unstable. EPSC measures were inadequate, had not been maintained, and were allowing eroded material to migrate into Watts Bar Reservoir. EPSC measures at the road crossings of the unnamed tributaries were inadequate, had not been maintained, and were allowing large amounts of eroded material to migrate into the unnamed tributaries. Additionally, trash and construction debris had migrated off site and into Watts Bar Reservoir at the concrete boat ramp.

## **XVIII.**

On August 15, 2005, the division issued a NOV to Respondent Land Resources for the violations noted during the August 11, 2005, site inspection. Respondent Land Resources was instructed to attend a CRM scheduled for September 7, 2005, at the KEFO.

## **XIX.**

On September 7, 2005, the Respondents attended a CRM at the KEFO, during which the Respondents agreed to immediately address the EPSC measures at the main entrance to the subdivision, at the community boat ramp, and at the concrete boat ramp. The Respondents were



also instructed to ensure that all other builders and lot owners be made aware of the need to maintain compliance with the TNCGP.

## **XX.**

On March 9, 2006, division personnel conducted a site inspection and noted little improvement to the EPSC measures from the conditions noted during previous site inspections.

## **XXI.**

On July 27, 2006, division personnel conducted a site inspection and again noted little improvement to the EPSC measures from the conditions noted in the previous site inspections. Large areas of the site were bare and unstable and inadequate attempts had been made to temporarily stabilize idle construction areas. The existing EPSC measures were inadequate and were in need of maintenance. Eroded material was continuing to migrate into the unnamed tributaries to Watts Bar Reservoir, causing a condition of pollution. Division personnel noted significant sediment deposits in Watts Bar Reservoir at the concrete boat ramp, causing a condition of pollution.

## **XXII.**

On August 2, 2006, the division issued a NOV to the Respondents for the violations observed during the July 27, 2006, site inspection. The Respondents were instructed to immediately correct the deficiencies noted during the July 27, 2006, inspection and correctly implement all elements of the SWPPP.

### **XXIII.**

On August 11, 2006, Respondent R & R submitted a Notice of Termination (NOT) to the division. In the NOT, Respondent R & R indicated that construction activities were continuing and storm water discharges associated with those construction activities were the responsibility of Respondent Land Resources.

### **XXIV.**

On November 14, 2006, personnel from the Environmental Protection Agency (EPA) and division personnel conducted a joint site inspection and noted that large areas of the site were bare and unstable. The existing EPSC measures were inadequate, in need of maintenance, the existing culverts and road crossings were filled with accumulated sediment and, significant sediment deposits were noted in the unnamed tributaries within the site. Although a few cleared hillsides exhibited scattered vegetative growth, large erosion gullies were developing on the slopes throughout the site. The slopes adjacent to the concrete boat ramp remained unstable and a large sediment deposit was noted extending into Watts Bar Reservoir for the entire length of the walk way and piers at this location, causing a condition of pollution. Additionally, division personnel noted that a minor road crossing had been installed across the unnamed tributary in Phase 2A without written ARAP authorization.

### **XXV.**

On June 18, 2007, the EPA issued Administrative Order (AO) CWA 04-2007-4772 to Respondent Land Resources for the violations noted during the joint inspection conducted on November 14, 2006. The Respondent was instructed to:

- Provide copies of all records required by Sections 3.5.7 and 3.5.8 of the TNCGP within 30 days.

- Take all reasonable steps to comply with the requirements of Section 6.4 of the TNCGP, specifically; stabilize all bare areas and drainages on the side of New Hope Road and initiate Best Management Practices (BMP) in accordance with the SWPPP on the north side of New Hope Road.
- Immediately reduce the pollutants in storm water discharges in accordance with Section 6.14 of the TNCGP; specifically, remove accumulated sediment from storm drains near the community dock and remove sediment and check dams from the stream on the north side of New Hope Road.
- Immediately remove accumulated sediment from silt fence where the design capacity had been reduced by fifty percent.

Documentation of the completion of these requirements was to be submitted to the EPA within thirty days of receipt of the AO.

#### **XXVI.**

On July 26, 2007, division personnel conducted a site inspection and noted little change in site conditions. Large areas of the site remained bare and unstable and curb inlet protection was lacking through out the site. Division personnel additionally noted that a large rock check dam had been installed within the unnamed tributary in Phase 2A.

#### **XXVII.**

On November 13, 2007, the EPA issued Consent Agreement and Final Order (CA/FO) CWA-04-2007-4541(b) to Respondent Land Resources. The CA/FO did not relieve Respondent

Land Resources of the obligation to comply with the terms and conditions of the TNCGP coverage and of the ARAP authorization issued by the division.

#### **XXVIII.**

On February 12, 2008, division personnel conducted a site inspection and noted that large areas of the site remained unstable. Although slopes adjacent to New Hope Road had been stabilized with vegetation, large areas of the slopes adjacent to and leading to the concrete boat ramp were bare and unstable, and erosion gullies were continuing to form on these slopes. Eroded material from these slopes was continuing to migrate into Watts Bar Reservoir. Inlet protection was lacking throughout the site and the existing EPSC measures were in need of maintenance. Sediment was continuing to migrate into the unnamed tributaries adjacent to the minor road crossings.

#### **XXIX.**

During the course of investigation since the joint inspection of November 14, 2006, the division incurred DAMAGES in the amount of EIGHT HUNDRED FORTY SIX DOLLARS AND SIXTY FOUR CENTS (\$846.64).

#### **VIOLATIONS**

#### **XXX.**

By failing to comply with the terms and conditions of the TNCGP and by violating the terms and conditions of an existing ARAP, the Respondents have violated T.C.A. §§ 69-3-108(b) and 114(b), which state in part:

§ 69-3-108(b):

It is unlawful for any person, other than a person who discharges into a publicly owned treatment works or a person who is a domestic discharger into a privately owned treatment works, to carry out any of the following activities, except in accordance with the conditions of a valid permit:

- (1) The alteration of the physical, chemical, radiological, biological, or bacteriological properties of any Waters of the State;
- (4) The development of a natural resource or the construction, installation, or operation of any establishment or any extension or modification thereof or addition thereto, the operation of which will or is likely to cause an increase in the discharge of wastes into the waters of the state or would otherwise alter the physical, chemical, radiological, biological or bacteriological properties of any waters of the state in any manner not already lawfully authorized;
- (6) The discharge of sewage, industrial wastes or other wastes into waters, or a location from which it is likely that the discharged substance will move into waters;

§ 69-3-114(b):

In addition, it is unlawful for any person to act in a manner or degree which is violative of any provision of this part or of any rule, regulation, or standard of water quality promulgated by the board or of any permits or orders issued pursuant to the provisions of this part; or fail or refuse to file an application for a permit as required in § 69-3-108; or to refuse to furnish, or to falsify any records, information, plans, specifications, or other data required by the board or the Commissioner under this part.

**XXXI.**

By causing a condition of pollution in Watts Bar Reservoir and its unnamed tributaries, the Respondents have violated T.C.A. Section § 69-3-114(a), which states:

§ 69-3-114(a):

It shall be unlawful for any person to discharge any substance into the waters of the state or to place or cause any substance to be placed in any location where such substances, either by themselves or in combination with others, cause any of the damages as defined in § 69-3-103(22), unless such discharge shall be due to an unavoidable accident or unless such action has been properly authorized. Any such action is declared to be a public nuisance.

## **ORDER AND ASSESSMENT**

### **XXXII.**

WHEREFORE, pursuant to the authority vested by T.C.A. §§ 69-3-109, 69-3-115 and 69-3-116, I, Paul E. Davis, hereby issue the following ORDER AND ASSESSMENT to the Respondents.

1. The Respondents shall, within 30 days of receipt of this ORDER AND ASSESSMENT, establish effective EPSC measures on site, with particular emphasis on the permanent stabilization of areas of completed construction, such that no additional sediment is allowed to enter waters of the state. These professionally designed measures shall be chosen and installed in accordance with *Tennessee Erosion Control Handbook*.
2. The Respondents shall, within 7 days of establishing effective EPSC measures, submit written and photographic documentation indicating that these measures are in place. The Respondents shall submit this documentation to the Water Pollution Control Manager in the KEFO at 3711 Middlebrook Pike, Knoxville, Tennessee 37921 and a copy to the Water Pollution Control Enforcement and Compliance (E&C) Section Manager, at 401 Church Street, 6<sup>th</sup> Floor L&C Annex, Nashville, Tennessee 37243-1534.
3. The Respondents shall maintain EPSC measures until such time as all land disturbance activities at the site are complete and erosion-preventive permanent cover is established.
4. The Respondents shall, within 30 days of receipt of this ORDER AND ASSESSMENT, submit a Corrective Action Plan (CAP) for the removal of the accumulated sediment from the unnamed tributaries within the site and the accumulated sediment from the

concrete boat ramp area. The CAP shall be submitted for review and approval to the Water Pollution Control Manager in the KEFO. The Respondents shall correct any deficiencies the division finds and submit the corrected CAP to the Water Pollution Control Manager in the KEFO at the address shown in Item 2, within 30 days of notification of any deficiencies.

5. The Respondents shall, within 6 months of approval from the division, complete the actions outlined in the approved CAP and no additional permitting will be required for these approved activities. The Respondents shall submit notification of completion to the Water Pollution Control Manager in the KEFO at the address shown in Item 2 within 7 days of completion.
6. The Respondents shall pay DAMAGES to the division in the amount of EIGHT HUNDRED FORTY SIX DOLLARS AND SIXTY FOUR CENTS (\$846.64) within 30 days of receipt of this ORDER AND ASSESSMENT.
7. The Respondents shall pay a CIVIL PENALTY of SEVENTY TWO THOUSAND DOLLARS (\$72,000.00) to the division, hereby ASSESSED to be paid as follows:
  - a. The Respondents shall, within 30 days of receipt of this ORDER AND ASSESSMENT, pay a CIVIL PENALTY in the amount of TWENTY TWO THOUSAND DOLLARS (\$22,000.00).
  - b. If the Respondents fail to comply with Part XXXII, item 1 above in a timely manner, the Respondents shall pay a CIVIL PENALTY in the amount of TEN THOUSAND DOLLARS (\$10,000.00), payable within 30 days of default.

- c. If the Respondents fail to comply with Part XXXII, item 2 above in a timely manner, the Respondents shall pay a CIVIL PENALTY in the amount of TEN THOUSAND DOLLARS (\$10,000.00), payable within 30 days of default.
- d. If the Respondents fail to comply with Part XXXII, item 3 above in a timely manner, the Respondents shall pay a CIVIL PENALTY in the amount TEN THOUSAND DOLLARS (\$10,000.00), payable within 30 days of default.
- e. If the Respondents fail to comply with Part XXXII, item 4 above in a timely manner, the Respondents shall pay a CIVIL PENALTY in the amount TEN THOUSAND DOLLARS (\$10,000.00), payable within 30 days of default.
- f. If the Respondents fail to comply with Part XXXII, item 5 above in a timely manner, the Respondents shall pay a CIVIL PENALTY in the amount of TEN THOUSAND DOLLARS (\$10,000.00), payable within 30 days of default.


The Respondents shall otherwise conduct business in accordance with the Act and rules promulgated pursuant to the Act.

The director may, for good cause shown, extend the compliance dates contained within this ORDER AND ASSESSMENT. In order to be eligible for this time extension, the Respondents shall submit a written request to be received in advance of the compliance date. The written request must include sufficient detail to justify such an extension and include at a minimum the anticipated length of the delay, the precise cause or causes of the delay, and all preventive measures taken to minimize the delay. Any such extension by the division will be in writing. Should the Respondents fail to meet the requirement by the extended date, any associated Civil Penalty shall become due 30 days thereafter.



Further, the Respondents are advised that the foregoing ORDER AND ASSESSMENT is in no way to be construed as a waiver, expressed or implied, of any provision of the law or regulations. However, compliance with the ORDER AND ASSESSMENT will be one factor considered in any decision whether to take enforcement action against the Respondents in the future.

Issued by the director of the Division of Water Pollution Control on behalf of the Commissioner of the Tennessee Department of Environment and Conservation on this 24<sup>th</sup> day of April 2008.

  
Paul E. Davis, P.E.  
Director, Division of Water Pollution Control

#### **NOTICE OF RIGHTS**

Tennessee Code Annotated §§ 69-3-109, 115, allow any Respondent named herein to secure review of this Order and Assessment. In order to secure review of this Order and Assessment, the Respondent must file with the Department's Office of General Counsel a written petition setting forth each of the Respondent's contentions and requesting a hearing before the Water Quality Control Board. The Respondent must file the written petition within thirty (30) days of receiving this Order and Assessment. The petition should be sent to: "Appeal of Enforcement Order, TDEC-OGC, 20th Floor L & C Tower, 401 Church Street, Nashville, TN 37243-1548".

If the required written petition is not filed within thirty (30) days of receipt of this ORDER AND ASSESSMENT, the ORDER AND ASSESSMENT shall become final and will be considered as an agreement to entry of a judgment by consent. Consequently, the ORDER AND ASSESSMENT will not be subject to review pursuant to T.C.A. §§ 69-3-109 and 69-3-115.

Any hearing of this case before the Water Quality Control Board for which a Respondent properly petitions is a contested case hearing governed by T.C.A. § 4-5-301 *et seq.* (the Uniform Administrative Procedures Act.) and the Department of State's Uniform Rules of Procedure for Hearing Contested Cases Before State Administrative Agencies. The hearing is in the nature of a trial before the Board sitting with an Administrative Law Judge. The Respondent may subpoena witnesses on its behalf to testify.

If the Respondent is an individual, the Respondent may either obtain legal counsel representation in this matter, both in filing its written petition and in presenting evidence at the hearing, or proceed without an attorney. Low-income individuals may be eligible for representation at no cost or reduced cost through a local bar association or legal aid organization.

Payment of the civil penalty shall be made to "Treasurer, State of Tennessee" and shall be sent to the Division of Fiscal Services, Consolidated Fees Section, Tennessee Department of Environment and Conservation, 14<sup>th</sup> Floor L & C Annex, 401 Church Street, Nashville, TN 37243. The case number, shown on the first page of this Order and Assessment, should be included on or with the payment. All other correspondence shall be sent to Paul E. Davis, Director, Division of Water Pollution Control, Tennessee Department of Environment and Conservation, 6<sup>th</sup> Floor L & C Annex, 401 Church Street, Nashville, TN 37243.